IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'OURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 1ST NOVEMBER 2007 / 10TH KARTHIKA 1929

TRC.No. 300 of 2001

ORDER DATED 30.10.2000 IN TA.62/1996 OF THE SALES TAX APPELLATE TRIBUNAL, ADDITIONAL .BENCH, KOZHIKODE

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REVISION PETITIONERS/RESPONDENTS/ASSESSEES:
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1. M/S.B.S.K.ASSOCIATES,
   NEW MAHE,
   REPRESENTED BY ITS MANAGING PARTNER,
   C.H.BASHEER.

2. C.H.BASHEER,
   S/O.ABOOBACKER,
   AGED 35 YEARS, BUSINESSMAN,
   MANAGING PARTNER,
   B.S.K.ASSOCIATES, NEW MAHE,

3. K.P.SABIR,
   S/O.C.K.UMMER,
   AGED 31 YEARS, PARTNER,
   B.S.K.ASSOCIATES, NEW MAHE,

4. P.REHNA,
   D/O.UMMERKUTTY,
   AGED 31 YEARS, PARTNER,
   B.S.K.ASSOCIATES, NEW MAHE.

BY ADV. SRI.R.SURENDRAN
SRI.K.LAKSHMINARAYANAN

RESPONDENT/APPELLANT/REVENUE:

STATE OF KERALA,
REPRESENTED BY INSPECTING ASSISTANT COMMISSIONER,
AGRICULTURAL INCOME TAX AND SALES TAX DEPARTMENT,
KANNUR.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS TAX REVISION CASE HAVING COME UP FOR ADMISSION ON 01/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

T.R.C.No.300 of 2001

Dated, this the 1st day of November, 2007

ORDER

H.L.Dattu, C.J.

Though the matter is posted for admission, by consent of the learned counsel appearing for the parties, it is taken up for final hearing.

(2) Admit.

(3) The assessee firm and its partners have filed this revision petition, being aggrieved by the orders passed by the Sales Tax Appellate Tribunal, Additional Bench, Kozhikode in T.A.No.62 of 1996 dated 30th October, 2000.

(4) In this proceedings, we are concerned with the assessment year 1993-94.

(5) The assessee is a dealer in wooden furniture. He had filed his annual returns for the assessment year 1993-94. The assessing authority after rejecting the returns so filed by the assessee and also after rejecting the books of accounts produced at the time of assessment proceedings, had issued a pre-assessment notice pointing out certain irregularities said to have been committed by the assessee and further, according to the assessing authority, there was suppression of the taxable turnover. After receipt of the reply filed by the assessee to the pre-assessment notice, the assessing authority has proceeded to pass best judgment assessment by making certain additions towards the purchase turnover of the timber and other materials.

(6) Aggrieved by the said order, the assessee had filed appeal before the first appellate authority in S.T.A.No.388 of 1995. The first appellate

authority after detailed consideration of the issues involved in the appeal, by its order dated 24.11.1995 has allowed the assessee's appeal and modified the orders passed by the assessing authority.

(7) The State being aggrieved by the said orders passed by the first appellate authority had filed appeal before the Sales Tax Appellate Tribunal in T.A.No.62 of 1996. The Tribunal has allowed the Department's appeal by its order dated 30th October, 2000.

(8) Aggrieved by the said order passed by the Tribunal, the assessee is before us in this tax revision case.

(9) The assessee has raised the following questions of law for our consideration and decision. They re as under:

> "1. Whether the Appellate Tribunal can pass an order allowing the appeal, dismissing cross objection and thereby setting aside the order of Appellate Assistant Commissioner and restoring the order of the assessing authority without a reasoned and speaking order and in violation of the principles of natural justice?
>
> 2. Whether the Appellate Tribunal can be justified in interfering with the finding arrived at by the Appellate Assistant Commissioner, without considering the orders of the assessing authorities on merit?"

(10) The learned counsel appearing for the assessee would submit that the order passed by the Tribunal is a cryptic order and that the Tribunal without considering the issues that were canvassed by both the parties, has passed a non-speaking order.

(11) To appreciate the contention canvassed by the learned counsel for the assessee, we have carefully perused the orders passed by the Tribunal.

(12) The Tribunal in its order refers to the case of the appellant and that

of the assessee and thereafter proceeds to observe as under:

> "The defects pointed by the assessing authorities does not justifying the meagre addition sustained by the Appellate Asst. Commissioner. In view of the above I reverse the order of the Appellate Asst. Commissioner and restore the order of the assessing authority. The state appeal is allowed."

(13) The Tribunal is not only a fact finding authority but also is empowered to decide legal issues. While deciding the appeal the Tribunal is expected to consider the issues canvassed by both the parties and then pass a speaking order. An order which does not contain any reason, in our opinion, is not an order in the eye of law. In the instant case, the Tribunal without adverting to any one of the contentions canvassed by the assessee and also by the Department, has merely and mechanically allowed the Department's appeal. This, in our opinion, cannot be sustained by us. Therefore, the order passed by the Tribunal requires to be set aside and the matter requires to be remanded back to the Tribunal for fresh disposal in accordance with law after affording an opportunity of hearing to both the parties.

(14) Accordingly the following:

Order

i) Tax revision case is allowed.

ii) The questions of law framed by the assessee are answered in favour of the assessee and against the revenue.

iii) The order passed by the Tribunal in T.A.No.62 of 1996 dated 30.10.2000 is set aside.

iv) The matter is remanded back to the Tribunal to redo the matter in

accordance with law after affording an opportunity of hearing to both the parties.

In view of the order passed in the Tax Revision Case, the relief sought in C.M.P.No.3393 of 2001 need not be considered by us. Therefore, the said C.M.P. is rejected.

Ordered accordingly.

(**H.L.DATTU**)
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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